

**BEFORE THE INDIANA CIVIL RIGHTS COMMISSION
311 West Washington Street
Indianapolis, Indiana 46204**

STATE OF INDIANA)
) SS
COUNTY OF MARION)

**RITA DUNCAN,
Complainant,**

v.

**DOCKET NO. 07786
EEOC NO. 053761615**

**INDIANA STATE HIGHWAY
COMMISSION,
Respondent.**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On August 15, 1979, R. Davy Eaglesfield, III, Hearing Officer in the above cause, entered his recommendation. No party has filed objections to that recommendation within the ten (10) day period prescribed by IC 4-22-1-12 and Ind. Admin R, and Reg. §(22-9-1-6)-35(A).

Being duly advised in the premises, the Commission hereby adopts as its final Findings of Fact, Conclusions of Law, and Order those recommended in the Hearing Officer's Recommended Findings of Fact, Conclusions of Law, and Order, which is attached hereto and incorporated by reference herein.

Dated: October 19, 1979

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RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The undersigned Hearing Officer was appointed to hear the above-captioned case and all parties were notified of said appointment prior to the commencement of the hearing on June 29, 1979.

Complainant Rita Duncan (hereinafter "Duncan") was present at the hearing and was represented by counsel, Ms. Alice M. Craft and Ms. Harinder Kaur. Respondent Indiana State Highway Commission (hereinafter "Highway Commission") was represented by counsel, Ms. Terri J. Morrill, Deputy Attorney General. Mr. Thomas S. Williams, Director of the Division of Personnel of the Highway Commission was also present throughout the hearing. Other witnesses were separated by stipulation of the parties.

Having considered the official record, the evidence admitted at Hearing the arguments of counsel, and being duly advised in the premises, the Hearing Officer hereby recommends the entry of the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Duncan is a female currently residing in Indianapolis, Indiana and employed as a Senior Planner by the Indiana State Planning Services Agency.
2. Highway Commission is an agency of the State of Indiana and at all times related to this action is and has been an employer as defined in the Indiana Civil Rights Law, IC 22-9-1-4(h).
3. Duncan began working for the Highway Commission in the Administration Section of the Division of Land Acquisition on July 28, 1975.
4. When Duncan was hired, she was classified as a "Duplicating Machine Operator VI".
5. Duncan performed various duties in that position, including operation of a photocopy machine, typing, filing, compiling information needed by the Attorney General's office to file complaints related to land acquisition, and assisting Donald McCollum (hereinafter "McCollum"), among other.
6. McCollum held the position of Business Administrator II in the Administration Section of the Division of Land Acquisition.
7. McCollum's duties involved verification and review for accuracy and correctness of payroll, travel vouchers, motor pool logs and various other reports and documents pertaining to personnel matters and maintaining all records concerning personnel of the Division of Land Acquisition; he reported directly to the Chief of the Administration Section of the Division of Land Acquisition.
8. Early in 1976, because McCollum was leaving the employ of Highway Commission, Highway Commission sought to fill his position.
9. McCollum's position was reclassified from Business Administrator II to Administrative Assistant V.
10. The duties to be performed by the person hired for the position of Administrative Assistant V were the same as those performed by McCollum.
11. The position of Administrative Assistant V was posted internally and advertised as being open.

12. The procedure which was established by the Highway Commission to fill a staff vacancy and which was followed in the filling of the position of Administrative Assistant V, was as follows:
 - a. Written applications were submitted to the Highway Commission's Division of Personnel.
 - b. The Division of Personnel screened the applicants and forwarded the applications of those deemed qualified to the Division of Land Acquisition.
 - c. After evaluation of the applicants by the Division of Land Acquisition, the Chief of the Division of Land Acquisition forwarded a recommendation that one of the applicants be selected to the Director of the Division of Personnel.
 - d. The Director of the Division of Personnel had the authority to and did appoint the person recommended by the Chief of the Division of Land Acquisition.
13. After screening, the Division of Personnel deemed the following applicants qualified and forwarded their written applications to the Division of Land Acquisition:
 - a. Rita Duncan
 - b. Patrick Wood (hereinafter "Wood")
 - c. Vendetta Dixon
 - d. Alan Lebin (hereinafter "Lebin")
 - e. Rebecca Sherwood.
14. The following persons participated in the evaluation of the applicants in the Division of Land Acquisition:
 - a. John w. Brossart (hereinafter "Brossart"), Chief of the Division of Land Acquisition.
 - b. William H. Belky (hereinafter "Belky"), Assistant Chief of the Division of Land Acquisition.
 - c. Samuel Cline (hereinafter "Cline"), outgoing Chief of the Administration Section of the Division of Land Acquisition, a subordinate of Brossart and Belky.

- d. Donald E. Christy (hereinafter "Christy") incoming Chief of the Administration Section of the Division of Land Acquisition, a subordinate of Brossart and Belky.
- 15. Interviews of all applicants were conducted by Cline and Christy.
- 16. Cline and Christy recommended Duncan, Wood and Suzanne Merry (hereinafter "Merry") for the position.
- 17. Merry, secretary to the Chief of the Administration Section of the Division of Land Acquisition, did not submit a written application, was not screened by the Division of Personnel, and therefore was not eligible for selection at that time.
- 18. Wood and Lebin were also interviewed by Belky separately from interviews conducted by Cline and Christy.
- 19. Wood and Lebin were male; the other applicants were female.
- 20. Before the interview with Wood, Belky was acquainted with Wood's father which influenced Belky's evaluation of Wood.
- 21. During the interview with Wood, Belky did not inquire into the extent of Wood's knowledge of real estate and computers.
- 22. None of the female applicants were interviewed by Belky.
- 23. The reason cited by Highway Commission that Belky interviewed the male applicants but not the female applicants were that the male applicants were not already employees of the Highway Commission. This was not substantiated by Belky, however, and Belky was not personally familiar with the qualifications of the female applicants with the possible exception of Rebecca Sherwood, who was Belky's secretary.
- 24. Belky recommended to Brossart that Wood be selected for the position.
- 25. Based on Belky's recommendation, Brossart recommended to the Director of the Division of Personnel that Wood be selected for the position.
- 26. Wood began work as Administrative Assistant V on March 29, 1976.
- 27. Highway Commission contend that because Wood's resume listed a college degree in Business Administration and background and training in real estate and computers, he was better qualified than Duncan for the position of Administrative Assistant V.

28. Witnesses testified that there was some discussion of expected expansion of computer operations, so that background and training in computers was a qualification of the position. The evidence shows, however, that the position of Business Administrator II had been recently reclassified to Administrative Assistant V without change in the duties to be performed.
29. The evidence further shows that Wood left the position with the Highway Commission after approximately six weeks, and that Merry was selected to replace Wood.
31. A college degree in Business Administration and background and training in real estate and computer were not required for performance of the duties of the position of Administrative Assistant V.
32. Based on comparison of their resumes with the written job descriptions and qualifications for the position, both Duncan and Wood were qualified.
33. There is no evidence that Duncan was an unsatisfactory employee of Highway Commission in any way. Rather, the evidence shows that she was a dependable employee.
34. Duncan was better qualified for the position of Administrative Assistant V than Woo because of her experience with Highway Commission and because she had assisted McCollum in performing the duties to be performed by the person selected to the Administrative Assistant V.
35. If Duncan had been hired for the position of Administrative Assistant V, she would have begun work in that position on March 29, 1976.
36. On September 27, 1976, Duncan left the Highway Commission for employment with the Indiana State Planning Services Agency.
37. On March 5, 1978, Duncan was promoted to the position she now holds, at which time her salary exceeded that she would have received as Administrative Assistant V.
38. If Duncan had held the position of Administrative Assistant V from March 29, 1976 until March 5, 1978, she would have received a total of five thousand three hundred twelve dollars (\$5,312.00).

39. Any Conclusion of Law which should have been deemed to be a Finding of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties.
2. The complaint was timely filed.
3. Highway Commission is a “person” as that term is defined in IC 22-9-1-3(a).
4. Highway Commission is an “employer” as that term is defined in IC 22-9-1-3(h).
5. Highway Commission committed a “discriminatory practice” as that term is defined in IC 22-9-1-3(1) in that it excluded Duncan from equal opportunities because of her sex by treating male and female applicants in a non-uniform manner during the selection and interviewing process.
6. Highway Commission committed a “discriminatory practice” as that term is defined in IC 22-9-1-3(1) in that Duncan has shown the following (see *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 5 FEP 965 (1973)):
 - a. She is a female.
 - b. She applied and was qualified for a position for which Highway Commission was seeking applicants.
 - c. Despite her qualifications, she was rejected for the position.
 - d. A less qualified male was selected for the position.
 - e. Respondent’s stated reasons for the interviews given male applicants but not female applicants and for selecting a male are in fact pretextual.
7. As a result of discriminatory treatment of Duncan by Highway Commission, Duncan lost salary in the amount of five thousand three hundred twelve dollars (\$5,312.00).
8. Any Finding of Fact which should have been deemed to be a Conclusion of Law is hereby adopted as such.

ORDER

1. Highway Commission shall cease and desist from excluding females from equal opportunities because of sex by processing applications of males differently than those of females and by selecting less qualified males to fill vacant positions.
2. Highway Commission shall pay to Duncan five thousand three hundred twelve dollars (\$5,312.00) within thirty (30) days of receipt of notice that a majority of the Commission has approved this Order.

Dated: May 15, 1979